The Islamic State in the Contemporary International Scenario

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Abstract

[In exploring the nature of the Islamic state in the contemporary international scenario, this paper first addresses the basic and most fundamental question: what is the primary social and collective demand of Islam from the Muslims living in countries where they constitute a clear majority? Next, the Islamic concept of state is briefly compared with other notions of state prevalent in the contemporary world. The basic features that distinguish the Islamic state from other political organizations and institutions are then outlined. Finally, the paper discusses briefly the modalities of realizing the ideal of an Islamic state as a practical reality in the modern world, with particular reference to Pakistan, the case of which has been raised time and again by many observers. – *Author*]

What should be the nature of the Islamic state in today’s world? This question is not only extremely important within the Muslim world, but also constitutes one of the central issues in contemporary relations between Muslims and non-Muslims. The nature and future of our relations with the non-Muslim world in general, and with the Western world in particular, depend largely on how we understand, interpret and accommodate the concept of the Islamic state in the context of the hard realities surrounding us. It should not be inferred from the expression “accommodate the concept of the Islamic state” that any modification or adjustment might be made in the Qur’anic injunctions or the model example of the Prophet (peace be upon him [pbuh]): what is meant is that a fresh interpretation is needed of those concepts and practices that were developed by the early doctors of Islam in the context of the political and economic realities of their own respective eras. These concepts and practices were based on the early doctors’ understanding of the divine text and on their interpretation of the model example of the Prophet (pbuh). To set priorities for the restructuring of Muslim society and institutions, today’s Muslims have to be guided by a more profound understanding of both the scriptural foundations of Islam relevant to politics and statecraft, as well as the contemporary political and constitutional paradigm.

Let us be clear from the very outset about the significance of the problem in the understanding of today’s realities. For this purpose, a brief reference to Muslim political discourse in the twentieth century is in order. Upon examining the Muslim theological and political discourse of the early twentieth century, particularly the revivalist literature produced by leading Islamic scholars, one notices a very important common feature: in all the writings, the concept of a model Islamic state has been central. The ‘revival’ of the model Islamic state is emphasized as a fundamental prerequisite for the revival of Islam and the renaissance of the Muslims. A substantial portion of the religio-political discourse of the twentieth century revolves around this question.

Interestingly, this conspicuous preponderance of political overtone sets twentieth century Islamic scholars apart from almost all earlier Islamic scholars. Among the most authoritative exponents

of Islam and the most widely acclaimed interpreters of the Shari'ah from the days of the founders of the major legal schools up to the end of the nineteenth century, none assigned such a central place to the subject of statecraft and politics as is found in the writings of twentieth century revivalist scholars. Indeed, the former seldom discussed the state as a central issue in their writings. In this context, we may cite Shah Wali Allah of Delhi, the progenitor of Islamic revivalism in the subcontinent, as well as other earlier Muslim scholars and divines. They too assigned varying degrees of importance to different concepts in their writings and respective systems of thought, and the idea of the establishment or the revival of a model Islamic state as the fundamental and primary requirement never featured so importantly in their expositions. Political issues did not occupy a pivotal position in their thinking. Perhaps, it was because of the influence of the West and the obtaining situation in the early part of twentieth century that the question of the establishment of Islamic state became so central to Muslim thought in that period.

In the early twentieth century, the Ottoman Empire had fallen. The Russian Revolution had taken place. The British and the French had come out victorious from the First World War. The United States was emerging as a leading political power in the world. These important events led some Muslim thinkers to believe that the presence of a strong Muslim empire was needed to support and defend the cause of Islam. These thinkers must have noticed that there were great empires and political powers advancing different ideologies and political and cultural agendas. The Western secular democracy and free market economy had its defenders in the form of the British Empire, the French Republic and the emerging United States. The Communist ideology had recently found a strong and formidable defender in the form of the erstwhile Soviet Union. On the other hand, they must have noticed, with the downfall of the Ottoman Empire, the Islamic ideology remained the only major ideology left without any political power to defend and promote it.

This situation seems to have led some Muslim scholars and thinkers to deal with the question of the Islamic state and the modalities of its revival. They felt the need for its re-establishment more keenly than anybody else in the past. It is not a coincidence that Muslim thinkers who laid greater emphasis on the idea of the Islamic state were mostly also founders of great popular movements for the revival and renaissance of Islam: Mawlana Mawdudi, Taqi-uddin Nabhani, Sayyid Qutb, and several other Muslim leaders were working for the revival of Islam in different parts of the Muslim world, and were, at the same time, vocal exponents of the idea of the Islamic state in the context of the twentieth century. Even the *Khilafat* Movement, witnessed in the subcontinent in the wake of the downfall of the Ottoman Empire, was motivated by the popular Muslim desire to have a strong political base that would promote and defend the message of Islam.

The underlying motive of the *Khilafat* Movement seems to have been the deep-rooted desire of the Muslims of the subcontinent to have a state of their own. The very idea of Pakistan was motivated by this primary consideration. Whatever the pronouncements of the leaders of All India Muslim League and the interpretations given to different statements of the Quaid-i-Azam Muhammad Ali Jinnah, the fact remains that the underlying consideration that provided impetus to the Pakistan movement was the Muslims' desire to have a state of their own. It was the cherished ideal of the Muslim masses to have a homeland which could, to quote the Quaid-i-Azam, "be the bulwark of Islam" and the base from where the message of Islam could be

promoted and it could be demonstrated to the modern world that the principles of Islam were as practicable in the current environment as they were in earlier centuries of Muslim era.

Significantly, we do not find in the Qur'an any direct reference to the institution of a state. Even the term 'state,' or its Arabic equivalent '*dawlah*,' has never been used in the Qur'an. The word *dawlah* has been used in the early Islamic sources but not in the sense of a 'state.' The term came to mean 'state' much later, in the fourth or fifth centuries of the Muslim era. The foremost social and collective ideal that the Qur'an lays down is the concept of ummah — the universal Muslim brotherhood, which is required under the Qur'an to be the upholder of the divine message and to promote the cause of Islam at the individual as well as the collective level.

However, the Qur'an does refer to the political authority of the Muslims and the functions to be performed by it. Significantly, the authority is conditional. The Qur'an says, "Those are the people, if we give them authority and power in the land, they will establish religious services, pay the poll tax, enjoin the Good and forbid the Evil." It is significant that the Qur'an adds conditions to the performance of these responsibilities. The implication is that Muslims are collectively responsible to perform these functions only if they obtain political power somewhere in the land. Otherwise, if they are individually living as minorities in a non-Muslim environment, or are otherwise in a situation where they do not enjoy political freedom and authority, the Qur'an does not require them to undertake these functions.

The Concept of Ummah

The concept of ummah has occupied an important place in Muslim political thought from the very earliest centuries. There was a time, soon after the demise of the Prophet of Islam (pbuh) and for more than one century, when the entire Muslim world was politically represented by a single state. There was one political administration that housed the majority of the Muslim ummah in the world. But even in those days, the ummah was not identical with the Islamic state or the '*imamah*,' the term used by early Muslim jurists for the Islamic state. There were Muslim communities living outside the political frontiers of Islam even in the early decades of the first century. During the tenure of the second caliph, there were Muslim communities in India, China, the Far East and other parts of the world. These communities were undoubtedly part of the ummahin the moral and spiritual sense but were outside the politico-geographical frontiers of Islam. In the social, cultural, religious and ideological sense, they were certainly part of the ummah and the Muslim state was, to some extent, responsible for their welfare and defense, subject to certain conditions laid down by the Qur'an. Later, towards the middle of the second century, the Islamic state was divided into two administrations: the Eastern Caliphate headed by the Abbasids, and the Western Caliphate led by the Ummayyads. The concept of the ummah did not face any formidable challenge in this political division: questions of political boundaries, citizenship, rights and privileges of Muslims living within the two Muslim administrations did not pose any serious problem to the unity and solidarity of ummah in the spiritual and cultural sense. Despite the presence of two political administrations — and later many others — the concept of ummah remained alive and supreme.

The idea of *Daral-Islam*, or the territory of Islam, which was developed by the early Muslim jurists during the lifetimes of the companions of the Prophet (pbuh), provided a theoretical and legal framework for maintaining the unity of two or more political administrations *inter se*.

Irrespective of the specific rulers, the entire territory ruled by Muslims, whether in the East or in the West, was considered a part of *Daral-Islam*. A uniform and common set of rules and principles was developed by Muslim jurists of the early centuries to define the mutual rights and obligations and regulate relations between the ummah and its political authority. The law of Shari'ah, with its variant interpretations, provided a common ground for allegiance to the ummah. This allegiance was so strong that it guaranteed Muslim unity and solidarity around the globe.

The difficulty was felt towards the end of the seventeenth century when, in the West, geography and territoriality became central to the idea of state with the development of the concept of the nation-state and the downfall of papal authority in Europe. With the fall of the Church as the unifying force and controlling power of Christian Europe and the resultant disintegration of the papal administration, eventually militant territorial nationalism emerged and led to the total dismemberment of the Church Empire and the establishment of strong nation-states throughout Europe. All this had its fallout on Muslim thought and Muslim political thinking.

From this point onwards, there were increasing encounters between Islam and the West, which kept intensifying and diversifying with the passage of time. Muslim thinkers came more and more under the influence of Western ideas through a number of avenues. It was from this background that nationalism and territoriality came to be acknowledged by Muslims as the major elements of the composition of the state. No doubt, the increasing appeal to the idea of the nation-state had a negative effect on the concept of ummah and the unity of the *Daral-Islam*. Territorial nationality became a decisive factor in the political debate, not only in the West but also in the East. It continued to acquire more and more influence, until, in time, the very concept of ummah, as defined by early Muslim scholars and maintained by later generations, was desecrated.

Ummah and *Imamah* Defined

According to the Qur'an, the ummah is the ultimate collective objective of the Muslims. To remain associated with and to express solidarity with the Muslim ummah is the responsibility of each and every individual Muslim. The functions assigned by the Qur'an to the Muslims collectively are understood to have been addressed to the ummah. Now, the ummah requires the political power of an Islamic state to have the necessary operational basis, machinery and other wherewithal for fulfilling these functions. The idea of the Islamic state was justified by Muslim jurists on the basis of this need. In the sayings of the Prophet (pbuh), there are references to various functions of the Muslim administration, the rulers, and persons-in-authority in different contexts, from which the need for and existence of an Islamic state can be presupposed. However, nowhere has the Prophet of Islam (pbuh) been reported to have required the believers to strive for the establishment of a state or to acquire political power. In this context, writers on the subject, particularly in the twentieth century, quote an important saying reported from the third caliph, 'Uthman ibn Affan: "Islam and *sultan* [or political authority] are twin brothers. One of them cannot stand on its feet without the other. Islam is the foundation while the *sultan* or political authority is a guard or watchman. If a building does not have a foundation, it is bound to collapse; if a building does not have a guard or a watchman, it is wasted." Thus, the third great caliph established the relationship between Islam and the state, laying the foundation for a unified concept of the Islamic state where there is no scope for separation between the religious

and the mundane or ‘the Church’ and the state.

Whenever early Muslim scholars defined the Islamic state or the *imamah*, as they used to call it, they defined it in such a way that the possibility of secularization of the institution was excluded. Therefore, there was never any division between the state and the religious belief of the Muslims.

Classical Muslim scholars, particularly those representing the juristic approach, have not much addressed the question of the origin of the state. This question was raised by scholars influenced by Greek thought, appearing from the end of the third century of the Islamic era. However, their discourse never represented the core of Muslim thought. The core of Muslim thought was represented by the jurists and the theologians who discussed the question of *imamah* mostly in the light of the Qur’an and the Sunnah. Nevertheless, it goes to the credit of men like Abu Nasr al-Farabi, one of the most well-known and profound intellectuals of the early centuries of Islam, that they tried to formulate Greek ideas in the political realm in such a way that they appeared to be adjustable to Islamic theology and Qur’anic references. Farabi, for example, categorizes the state as *al-Madinah al-Dallah* (a misguided state) or *al-Madinah al-Fasiqa*. *Fasiq* and *dall* are terms used in the Qur’an for religiously impious and misguided persons. Farabi uses these terms for a degenerate state, indicating thereby that it is basically the moral and spiritual level which determines the category of a state. Likewise, *al-Madinah al-Fadilah*, or the virtuous state, refers to moral virtues. Farabi’s choice of words clearly shows that he was motivated by the idea of integrating Greek thought with Islamic concepts in order to present an interpretation of the Islamic state that was comprehensible in terms of Greek philosophy and logic.

Some scholars have tried to establish that the theory of social contract is relevant to the city-state of Madinah established by the Prophet (pbuh). They refer to the pledges given by the Ansar of Madinah to the Prophet (pbuh) at al-Aqabah during the Hajj seasons in the years preceding the Hijrah to Madinah. The *bay’ah*, or pledge of allegiance, given by them during these meetings, particularly the last one, was a contract giving rise to the Islamic state of Madinah. For many centuries to come, the *bay’ah* or contract remained the basis not only for political authority but also for political legitimacy. Not only in political life, but also in religious and social matters, the contract has been a basis of relationship in Muslim life. To this day, religious fraternities and spiritual orders in the Muslim world are based on a pledge or contract between the *sheikh*, or the spiritual guide, and the disciple. In marriage and family life too, it is the social contract between the spouses that brings Muslim society into existence. Thus, the idea of social contract, in one form or another, has been a reality in the Islamic system, and not a theoretical presumption or hypothesis as many scholars say about Rousseau’s exposition. Some political scientists and historians feel that it is the incontrovertible judgment of history that no state in known European history came into existence as a result of the social contract conceived by Rousseau. They conclude that the theory is false “because it has no validity in human experience and that it is a pure figment of man’s imagination.” According to Kant, this theory has no basis in history. He does not accept it as an explanation of the actual origin of the state.

The theologians and the scholastics in Muslim history, on the other hand, raised another, rather deeper, question, which later gave rise to discussions by jurists and other writers on the subject. That was the basic question of the necessity of the state: whether the state is necessary by divine

verdict or by the dictate of logic and reason. From the earliest days, there have been two views in Islamic theology on this issue. There is a group of thinkers who hold that the establishment of an Islamic state is necessary according to the dictates of logic and reason. In other words, human reason and logic require that humans should have a state; therefore, Muslims should also have an Islamic state. On the other hand, the majority of the theologians representing the Sunni mainstream is of the view that the establishment of an Islamic state is necessitated both by the requirements of the divine writ and by the dictates of reasoning and logic. Relying primarily on scriptural authority, they emphasize that the Islamic state is necessary, on the one hand, to ensure the implementation of those injunctions of Islam that are to be implemented by the state and, on the other, to exclude any dichotomy between state and religion, and between this world and that world.

It may be pointed out here that the Qur'an consists of two categories of injunctions, as do the Sunnah and the authoritative expositions of the Shari'ah. The first category consists of those principles that are to be implemented by individuals. In this respect and to this extent, Islamic teachings are similar to the teachings of other religions where the matter of enforcing religious precepts has been left to the individual, who has the responsibility to implement them without the intervention of any external authority. However, there is also a second category of principles and injunctions in the Shari'ah and *fiqh* (that is, the understanding of the injunctions of Islam as interpreted by Muslim jurists), the implementation of which requires the establishment of an Islamic state. Interpreters of the Qur'an have held that these latter injunctions are addressed to Muslim rulers as representatives of the Muslim community.

The penal code of Islam, the instructions related to international law, and the instructions related to the administration of justice are, to mention some examples, areas that are to be dealt with by the state. This is why theologians feel that the establishment of an Islamic state is necessitated by the dictate of divine revelation as well as by logic and reason. Perhaps due to this primary question, the discussion related to state has remained part of Muslim theology, rather than legal or juridical thought. The legal exponents of Islam, the jurists or the *fuqha*, seldom raise these issues in their compendia on Islamic law. They presuppose the existence of the Islamic state as a practical reality and base their rulings on this presupposition. To them, the question of the origins of the state is a merely theoretical question. In their time, the Muslim administration was a continuing fact. It was already in full swing. The law of the land, by and large, was Shari'ah, which was adjudicated upon by Muslim judges and jurists.

However, to Muslim jurists and writers, the state was not an end in itself. It was a means to achieve an end, and that end was the establishment of the rule and the supremacy of the Shari'ah or, to borrow the Biblical expression, the realization of God's plans revealed in the form of the divine injunctions. Muslim jurists developed a principle which is frequently quoted in the juridical literature: "Whatever is needed to implement an obligation is also obligatory." Their argument was simple: the enforcement of the Shari'ah is obligatory; Shari'ah cannot be substantially enforced in the absence of effective political power of Muslims; therefore, the establishment of political power and authority is necessary.

The Qur'an is not concerned with the form or the structure to be adopted for the establishment of the state. It refers only to its functions and responsibilities. The question of form has been left to

be decided by the community. Through the 1,400 years of the Islamic era, Muslim scholars, rulers and jurists have been discussing different forms of government in the context of their respective times and climes. This is why, what we call the traditional or classical Islamic state — the Umayyad or the Abbasid, for example — had a variety of features. Depending on the perspective, it looks partly like a monarchy, partly like an aristocracy, and partly like a democracy. In reality, however, it was neither a democracy with its modern connotations, nor an aristocracy, in the sense it was understood in the West; nor was it a monarchy in the medieval European sense. It may have been a combination of all of these, incorporating some features of all of them. However, one thing is clear: that it was established to realize the sublime objective of enforcement of the Shar'iah.

As long as the rulers enforce the Shari'ah in letter and spirit in such areas as are relevant to the state and to the functions of political authority, the state is an Islamic state. No state was considered to be an Islamic state by the authoritative exponents of Muslim theology and Shari'ah unless it passed on this primary touchstone. This is why the question of limits of political control was raised by Muslim jurists: to emphasize and ensure that those concerned with political authority would know from the beginning the limits of the exercise of their authority. Indeed, the question of limits on the use of authority had engaged the attention of Muslim jurists from the second century. By identifying these limits, they sought to curb the possibilities of misuse of power. It may be pointed out that Muslim jurists have been exceedingly cautious about misuse of power by rulers. They always tried to ensure that the monarchical traditions of the pre-Islamic Romans and Persians did not infiltrate the body politic of Islam. There were many incidents where Muslim jurists condemned some measure by a ruler because it represented revival of the ways of the Caesars or Chosoros.

In this regard, Imam Abu Yusuf, a great jurist of the second century, has laid down a principle adhered to by all Muslim schools and jurists. He says that the authority of the ruler to take decisions in public affairs is contingent upon the welfare of the masses and public weal. If an action is justified on the touchstone of public weal, it is permissible as valid; otherwise, it is not legally justified.

This dictum of Imam Abu Yusuf has been endorsed by other jurists as well. The well-known jurist Ibn Nujain has referred to a saying of the second caliph, Umar, as a basis for this principle. The second caliph had said that his role in dealing with the public money was like that of the guardian to an orphan's money, about whom Allah, the Almighty, has said in the Qur'an: “If the guardian is affluent, let him claim no honorarium; but if he is poor, let him have for his needs what is just and reasonable”.

When the second caliph appointed three leading companions to different positions of responsibility in Iraq, he ordered that a sheep be provided daily to be distributed amongst the three in a certain proportion defined by himself. Several other precedents have been quoted by Ibn Nujain and other jurists in support of this principle.

Later jurists phrased this concept in more precise language, saying **تصرف الإمام على الرعية منوط بالمصلحة** , i.e. the authority of the state over the public is contingent upon public weal. In other words, the state cannot exercise unlimited and unbridled authority. It cannot exercise

any power in any situation in violation of the principles of Shari'ah and the public policy. Thus, a decision taken by any authority in the state that violates public weal and disregards public interest would be *ultra vires* under the Shari'ah.

This principle applies not only to the state and its functionaries, but also to every person who is exercising any kind of authority. The judicial authority of the courts is also limited to the actions taken and judgments given in the legitimate interest of the aggrieved. Ibn Nujain has quoted a number of principles that are relevant in this context. One such principle is:

إذا كان فعل الإمام مبنيا على المصلحة فيما يتعلق بالأمور الهامة لم ينفذ أمره شرعا إلا إذا وافقه. فإن خالفه لم ينفذ

That is, the authority of the *qadi* (a judge or judicial officer) is limited by consideration of the legitimate interest of the aggrieved.

The second principle is **أمر القاضي لا ينفذ إلا إذا وافق الشرع** , i.e. orders of the court shall be enforceable to the extent that they are in conformity with the Shari'ah.

Muslim jurists and theologians have explained the Islamic state or *imamah* in a holistic way. We may profitably quote here a few definitions given by some authoritative writers, all of which converge on one point: the Islamic state administers '*this*-worldly' affairs of the Muslim and defends the '*other*-worldly' affairs of the Muslim— **سياسة الدنيا وحراسة الدين .**

Sayyid Sharif Jurijani, a philosopher and theologian of the eighth century (d. 816ah) says, "It [i.e. *imamah*] is the succession of the Prophet of Islam (pbuh) in the establishment of *din* or religion in this world and defense of the Muslim ummah in administrative and other worldly matters." Al-Mawardi, the celebrated exponent of Muslim political thought in the middle of the Abbasid period, says the Islamic state represents the continuity of the succession to prophethood in the protection of *din* and the administration of worldly affairs. The same wording has been used by Fakhr al-Din "Razi," the well-known theologian and philosopher; by Ibn Khaldun, the famous historian and founder of Islamic sociology; and by the eminent theologian Taftazani. Thus, one idea was always clear in the minds of the Muslims: whatever the concept and functions of the Islamic state, it was required to address both aspects: 'this-worldly' benefit of the Muslims and 'that-worldly' responsibilities of the Muslim community.

Indeed, there has never been any question of dichotomy between 'this world' and 'that world' in the Islamic system. The conflict between the religious and the mundane never found its place in the writings of Muslim jurists. They raised questions about issues like the rule of Shari'ah, the vicegerency, equality of citizens and *shura* (consultation on public matters). (These issues are considered later in this article.) However, Muslim jurists were never in any doubt about the holistic nature of the Islamic state.

In the West, writers on the history of political thought normally start with the city-state of the Greeks. They discuss Greek thought as the beginning of political thought in human history. This is followed by the Roman contribution to law and constitution. After the Romans, most of the Western writers make a jump of several hundred years and come to the modern West. Hardly any responsible writer has dealt with the contribution of Muslim thinkers to this field, or the question of the city-state established in Makkah before Islam, and the city-state established by

the Prophet (pbuh) in Madinah. Indeed, Madinah had a written constitution which was preserved and is available for study today. This constitution is a fairly comprehensive document and refers to a quite well-developed administration with different branches and an organized state. Fortunately, many significant details about this state have been preserved by early Muslim historians. Some of them will be discussed later in this article.

At this stage an important question that needs to be addressed is the question of sovereignty. It is true that Muslim scholars in the twentieth century have used the word 'sovereignty' under the influence of Western writings. The term is undoubtedly Western: it has been used in Western political parlance and carries the baggage of Western history. Its current Western connotations originate from the seventeenth century, when the nation-states of Europe were coming out of the spell and influence of papal authority and needed a political system to highlight their independence of the Pope. However, in contemporary Islamic discourse, the term conveys an idea that has always been an important subject of discussion among jurists and theologians dealing with the question of *al-Hukm*. Muslim writers have been unanimous on the issue that *Hukm,* or the ultimate authority to decide, to judge and to rule, belongs to Allah, the Almighty. This principle has been termed as sovereignty of Allah in modern Muslim parlance.

The principle of sovereignty of Allah is reflected in the principle of the supremacy of Shari'ah. The sovereignty of Allah does not necessitate—indeed, does not permit — any individual or group of individuals to assume any authority in the name of the Almighty or to exercise any special inherent power to issue rulings and edicts. The question of interpreting the divine injunctions and the role of the ulema and the jurists has been grossly misunderstood and misinterpreted in our times. Some religious scholars propagate the distorted perception that they have some divinely ordained inherent right to exercise special privileges. In fact, in the Islamic tradition, a jurist or a religious scholar has only the freedom to express an opinion. The legitimacy of that opinion is always subject to acceptance, not only by other jurists but also by the ummah, under the principle of consensus, or '*ijma*. The Qur'an refers to a process of mutual consultation and discussion whereby matters of state should be decided. It should be through this process of *shura* and mutual consultation of the rulers and the ruled that the divine injunctions should be interpreted and the details worked out to enforce the Shari'ah and uphold its supremacy.

In a well-known verse of the Qur'an, Muslims have been told: "In case you dispute among yourselves (the ruled and the rulers), then the dispute should be referred back to Allah and His Messenger." This simply means that the disputed matter should be decided with reference to the divine law, i.e. the Qur'an and the Sunnah. The very presence of this verse shows that there may be a difference of opinion about the interpretation of the Qur'an between the masses and the individuals in authority. There may also be a difference of opinion about matters of details in the implementation of the Qur'an and the Sunnah.

Those in authority cannot justify their position if they do not represent the people and the Muslim ummah. The Qur'an makes reference to this principle. The Sunnah of the Prophet (pbuh) has clearly laid down that the persons in authority should be those who enjoy the confidence, respect and support of the masses of the Muslim ummah. This has been upheld by Muslim scholars and jurists from the earliest days. There is a saying of the Prophet (pbuh), quoted by

Imam Muslim, one of the most authoritative compilers of the Hadith: “Your best rulers are those whom you like and who like you, for whom you pray and who pray for you; and your worst rulers are those who hate you and whom you hate, who curse you and whom you curse.” This hadith clearly shows that the nature of the relationship between the rulers and the community should be that of mutual confidence, love and respect.

The question of how this confidence and love should be gauged and ascertained has been left to be decided by the community, which would keep in view its own time and clime. A prominent Muslim philosopher of the eighth century ah, Sa’ad al-Din Taftazani, says that one of the basic qualifications and qualities of Muslim rulers is that they should enjoy the following of the people. Another scholar, an earlier authority, is more specific. The Shafi jurist and theologian al-Bagillani says: “In all his responsibilities and functions, the ruler is an agent and viceroy of the ummah. The ummah should always be behind him to correct him, to put him right, to remind him, to admonish him and to take the right from him when it becomes incumbent on him, to withdraw his investiture and to replace him should he commit something which necessitates his removal.” Ibn Taymiyyah, who was the most prominent Hanbali theologian of the medieval period and whose views are held in the highest esteem in contemporary Muslim societies, has also expressed the view that the investiture of the earliest caliphs, including the immediate successors of the Prophet (pbuh), was based on their acceptance as caliphs by the majority of the Muslim ummah. According to another theologian and scholar, Abdul Qadir Baghdadi, the basic principle is that the ummah has the final authority to select the rulers and to hire and fire its representatives. According to a Hanbali jurist, if the people agree on somebody’s leadership and express allegiance to him, his leadership will be established and recognized.

The Principle of *Shura*

When a ruler is elected and his investiture is complete, he is required under the Qur’an to decide on matters with *shura* or mutual consultation. The principle of consultation has been mentioned in the Qur’an as one of the hallmarks of Muslim society. Muslims are expected to resolve all disputes and decide on all issues, including family matters, social issues, political disputes, and legal and constitutional matters, through *shura*. The Shari’ah, or the Pathway (to ultimate success), as it is embodied in the Qur’an and the Sunnah, the two perennial sources of guidance, is beyond any change or modification. However, the practical application of Shari’ah is based on the understanding by Muslim jurists of the principles and injunctions laid down in these two sources. Muslim jurists are required in their individual and private capacity to exercise their best and most profound judgment in the understanding of the Qur’an and the Sunnah and to share their findings and conclusions with the ummah. If the ummah agrees with an interpretation, it becomes consensus, which is a source of Islamic law after the Qur’an and Sunnah. Where there are conflicting views among the jurists, if the ummahdoes not accord consensus to any single view and agrees to disagree by admitting that two or more interpretations are valid, all these differing views and opinions will be accepted with equal force and validity. In this situation, it is left to the individual Muslim to choose any of the accepted rulings to follow. This is why different schools of law have been operating in the Muslim world throughout its history. An interpretation that acquires validity and legitimacy through common acceptance should be based on the understanding of the divine edicts, the consensus of the jurists in the first place, and eventually the acceptance of the community.

It is not a coincidence that the founders of the major schools of law and theology whose views and interpretations are still followed in the Muslim world were all private individuals. They neither held any political office, nor enjoyed any government patronage. Abu Hanifah, Shafi, Malik, Jafar Sadiq, Ahmed ibn Hanbal, Zaid bin Ali and scores of others were only private citizens, yet great jurists in their own right. Their rulings and interpretations were accepted not only by their Muslim contemporaries but also by subsequent generations of Muslims. Even today, 99 percent of Muslims follow their rulings and interpretations in their day-to-day religious and religio-legal activities. This has given rise to an 'Islamic common law,' which is not confined to any form of legal code. This common law of Islam has neither been laid down by any monarch, nor been legislated by any formal or official legislative body. It is only the result of the collective and continuing efforts of private individual jurists. Indeed, the entire *corpus juris* of Islam has come down to us through the efforts of private jurists. Every jurist added to the existing treasury with more clarity and further elaboration. This store of knowledge in the legal domain was adjudicated upon by jurists and judges alike.

Judges in Islamic history were not bound by the ruling of any monarch or by the verdict of any government *per se*. What they were bound by was what they believed to be the most sound and valid interpretation of the divine law by the renowned jurists or jurist whose views were accepted by the Muslim community at large. This is why the law of Islam has been independent of the influence of political leaders and rulers. The process was guided and streamlined by the fundamental principles of jurisprudence laid down by the Qur'an and the Prophet (pbuh). It was further guided by the instructions given by the Companions of the Prophet (pbuh) and his immediate successors. In this regard, the instructions given by the second caliph of Islam are especially worth mentioning as they are considered the basis of various independent branches of legal knowledge. The second caliph can, for example, be considered the founder of an independent branch of Islamic law and jurisprudence known as *Adab al-Qadi*, or the procedural law of Islam. An important memorandum was addressed by him to another companion, Abu Musa Ash'ari, who was serving as the Chief Justice of the Province of Basra. This memorandum, written in the seventh century of the Christian era, lays down some fundamentals of law that have now found their way into the legal thought of mankind. One of the principles mentioned is: **لا ينفع تكلم بحق لا نفاذ له** "There is no use to speak of a right which cannot be enforced." This means that a judge should take up for decision or adjudication only those issues about which he can give an effective judgment and have it enforced.

Today, this concept has been accepted by the legal and judicial communities and has become an established principle followed by the judiciary everywhere. Now, in all civilized countries, the judiciary takes up only those issues where it feels that its judgment can be enforced. Where the judgment cannot be enforced, either only a declaratory judgment is issued or the judiciary abstains from making any pronouncement. In a number of modern constitutions, the Indian Constitution, for example, it has been laid down that in respect of some issues, the Supreme Court shall give only a declaratory judgment, simply because it would not be in a position to have that judgment effectively enforced. This principle, which protects the superior judiciary from incurring embarrassment over ineffectiveness, was enunciated for the first time by the Umar, the second caliph.

Another principle mentioned in the memorandum is: **الرجوع إلى الحق خير من التماري في**

الباطل . This means “To revert to the truth is better than to continue in evil.” In other words, if one decides something today, and finds a better solution the next day, one should not hesitate to review one’s earlier judgment. These examples show how the Muslim judiciary operated and worked.

The Muslim judiciary worked for the actualization of the Islamic concept of justice, a concept that was universal, not selective. The Qur’an refers to the terms “*qist*” and “*’adl*.” *Qist* is, perhaps, the Arabic source of the words “just” and “justice” in the Western languages. There is no concept of selective justice in Islam. The Shari’ah is clear on the issue that the same set of rules should be applicable to everybody, without any distinction or discrimination on grounds of status, office, color, race or sex. In the following verses, the Qur’an speaks for itself on justice:

1. Ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kith and kin, and whether it be [against] rich or poor: For Allah can best protect both. Follow not the lust [of your hearts], lest ye deviate from justice; and if ye distort [justice] or decline to do justice, verily, Allah is well-acquainted with all that ye do.
2. O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of a people to you make you depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do.
3. Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.
4. Fulfill the covenant of Allah when ye have entered into it, and break not your oaths after ye have confirmed them; indeed ye have made Allah your surety; for Allah knoweth all that ye do.
5. Nor take life — which Allah has made sacred — except for just cause. And if anyone is slain wrongfully, We have given his heir authority [to demand *qisas* or to forgive]: but let him not exceed bounds in the matter of taking life; for he is helped [by the law].
6. Come not nigh to the orphan’s property except to improve it, until he attains the age of full strength; and fulfill [every] engagement, for [every] engagement will be enquired into (on the day of Reckoning) .

7. Give full measure when ye measure, and weigh with a balance that is straight: that is the most fitting and the most advantageous in the final determination.
8. Nor can a bearer of burdens bear another's burden. If one heavily laden should call another to [bear] his load, not the least portion of it can be carried [by the other], even though he be nearly related. Thou canst but admonish such as fear their Lord unseen and establish regular prayer. And whoever purifies himself does so for the benefit of his own soul; and the destination [of all] is to Allah.
9. The recompense for an injury is an injury equal thereto [in degree]: but if a person forgives and makes reconciliation, his reward is due from Allah: for [Allah] loveth not those who do wrong.
10. But indeed if any do help and defend themselves after a wrong [done] to them, against such there is no cause of blame.
11. The blame is only upon those who oppress men with wrongdoing and insolently transgress beyond bounds through the land, defying right and justice: for such there will be a penalty grievous.
12. We sent aforetime our Messengers with clear signs and sent down with them the Book and the Balance [of Right and Wrong], so that men may stand forth in justice; and we sent down Iron, in which there is awesome power, as well as many benefits for mankind, that Allah may test who it is that will help, unseen, Him and His Messengers: For Allah is full of strength, exalted in might [and able to enforce His Will].

In Islamic history, the practice of justice has had another interesting feature that is as important as it is unique: legal pluralism. For ten centuries, starting from the second century of the *Hijra* until nearly the 11th century of the Muslim era, legal pluralism was integrated in the way Muslim societies functioned. It was a novel phenomenon that operated, both, within the Muslim community and at the level of the Islamic state. Within the Muslim society, there were different schools of jurists followed by large groups of Muslim citizens. For each of these schools of jurisprudence, Islamic laws were implemented differently, in accordance with their respective interpretations. The Hanafis were bound by the Hanafi law and Hanafi judges exercised authority over them. The Shi'as followed the Shi'a law, and their disputes were adjudicated by Shi'a judges, and so on and so forth. This practice was extant until very recently — as late as the 19th century in some countries. Indeed, before the Hijaz was taken over by the Saudis in the 1920s, a

type of religio-juridical pluralism had been maintained there by the Ottomans, who were themselves Hanafis.

At the same time, there are examples where non-Muslims were given the freedom to have their own matters adjudicated under their own law by their own judges. In Spain, Egypt, India and several other countries, non-Muslim courts existed side by side with Muslim courts to adjudicate issues and disputes of non-Muslims in accordance with their own laws. This practice has the authority of the Qur'an, in which it is said "فيه الله أنزل بما الإنجيل أهل وليحكم ", i.e. the followers of Evangile should decide their cases in accordance with the Evangile.

Thus, in all compendia of Islamic law, the legal systems followed by other communities have been recognized as valid legal systems. Their judicial decisions have been acknowledged as legitimate, and their personal status has been recognized. On this basis, Muslim jurists have laid down principles and rules to regulate the rights and privileges of non-Muslim communities in accordance with their own personal law. Their findings and rulings constitute the basis of what may be termed as the private international law of Islam.

It may be pertinent to mention here that the rules regulating Muslims' relations with their non-Muslim compatriots were formulated as early as in the days of the *Khulafa-i-Rashidin* (632–660ce).‡ Thus, the fourth caliph, Ali Ibn Abi Talib said: "علينا ما وعليهم لنا ما لهم ", which may roughly be translated as "For them, what is for us; upon them, what is upon us," meaning the non-Muslims have the same rights and privileges and the same obligations as the Muslims. The second Caliph, Umar, went further, saying: We (Muslims) promise that in areas where they (the non-Muslims) have their own majority, we will not appoint anybody from outside; rather, their people will be appointed to senior offices in their own areas.

Such have been the agreed basic principles of Islamic jurisprudence, and there has never been any significant difference of opinion about them.

Pakistan — A Modern Islamic State

In considering Pakistan's place in the modern world, one thing is clear: the country was created to be a homeland for the Muslims of the subcontinent. From the very beginning of the Pakistan Movement, i.e. March 23, 1940, when the Resolution for the division of India was adopted by the All India Muslim League in Lahore, Pakistan was considered a place where Muslim culture and Muslim identity would be protected. Quaid-i-Azam Muhammad Ali Jinnah is on record to have said, repeatedly, right from 1940 to 1948, the year of his death, that the system of government in Pakistan would be based on the principles laid down in the Qur'an and the Sunnah. The correspondence between him and the intellectual founder of this country, Allama Muhammad Iqbal, also include references to enforcement of the Shari'ah. According to Allama Iqbal, Shari'ah was to be the ultimate destiny of the Muslims of the subcontinent. In his famous Allahabad Address in 1930, he had clearly and unequivocally declared that Islam was itself a destiny.

There are some features that distinguish Pakistan's model of an Islamic State from the models conceived in other Muslim countries. However, comment on the models in other countries is

beyond the scope of this discussion.

There has been a general consensus in Pakistan on some of the fundamental issues related to the nature and character of the Islamic state in the contemporary world. This consensus has emerged through half a century of national debate. The debate had begun in the mid-1940s when the Pakistan Movement was in full swing. On some issues, the debate still continues. The consensus is reflected in the "Islamic provisions" incorporated in the six different constitutions and constitutional drafts prepared in Pakistan since its inception. From 1952 to 1973 and onwards, very similar Islamic provisions were included in all the constitutions, which indicates that a consensus based on a set of agreed principles has been at work.

The people of Pakistan, by and large, do not have any 'radical' views about the Islamic state and Islamic Shari'ah. Some Western writers quote different Muslim scholars whose views they consider radical, but no such radical view has been endorsed by popular support in Pakistan.

One of the most prominent exponents of the concept of the Islamic state was the late Mawlana Mawdudi (1903–1979). Records show that he consistently advocated constitutional and peaceful means for the realization of the objective of establishing an Islamic state. Indeed, the adoption of the constitutional and judicial method for the establishment of a model Islamic state has been unanimously suggested by almost all the political elements in Pakistan. Even the traditional ulema, who may be considered by some quarters as hardliners, have been operating in mainstream politics; many of them had already joined mainstream political work well before the creation of Pakistan. In fact, there is a greater number of traditional ulema working in mainstream politics than Islamic scholars who are considered moderate.

Thus, there has been unanimity on the principle that a peaceful, constitutional evolutionary process should be adopted to graduate Pakistan into the cherished model Islamic state. Pakistan has been moving in this direction despite the difference of opinion about the pace of the process. Some people feel that the process should be accelerated, while others feel it should slow down. A segment of the civil society thinks it is already too fast. But there has been no major disagreement about the essential evolutionary nature of the process.

Another aspect of the conceptual framework of the Islamic state needs some elaboration. The late Mawlana Mawdudi (1903-1979) had termed the Islamic state as far back as in 1939 as a '*theo*-democratic' state. 'Theo' in the sense that the state must include some competent Islamic scholars in the decision-making and legislative process because their role would be indispensable in the implementation and interpretation of the Shari'ah. At the same time, it the state should be democratic: it should be realized by popular representatives chosen through democratic means. The process of Islamization in Pakistan has taken place along theo-democratic lines insofar as it has been steered by a combination of coordinating scholars and intellectuals representing the modern educational tradition as well as the traditional ulema through peaceful constitutional means.

Indeed, these peaceful constitutional means are being guided and steered by representatives of the highest intellectual traditions of the modern world. The ulema in Pakistan have never insisted that only they should lead and man the process of Islamization. It was the ulema who demanded

that the task be assigned to the judiciary so that the process should be led by the superior judiciary. The Council of Islamic Ideology, the important constitutional vehicle of Islamization, mostly consists of members with modern education rather than the ulema. Right from 1956, when such a body was formally created under the Constitution for the first time, until now, most, if not all, of the people associated with and given the responsibility of membership of the Council have been ‘non-ulema.’ They have mostly been people with modern education. The Chairmanship of the Council of Islamic Ideology has been in the hands of PhD-holders from Oxford, Harvard and McGill, or graduates of Lincoln’s Inn, etc. Never has any traditional *alim* headed the Council. This shows that the process is being steered and monitored not by traditional Islamic ulema and the theologians or the upholders of theocracy, but by the most modern educated elite in the country. It is significant to note that despite this, the recommendations of the Council of Islamic Ideology have always met with consensus and popular acceptance both at the level of the ulema as well as the non-ulema.

In conclusion, the concept of the Islamic state as contemplated, conceived and gradually put to practice in Pakistan has not been properly and adequately understood in the Western world. There are some misgivings, which have been created intentionally or unintentionally. The result is that the concept is misconstrued and misunderstood by many quarters in the modern world. There is a need today for the concept to be properly explained in its true prospective, and for its implications in the context of today’s world order, free market economy, secular democracy and international humanitarian law to be clearly spelt out.

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The fact that the experience of Pakistan as a model Islamic State is relevant and educative has been acknowledged by several Western writers, including Prof. A. J. Arberry and Prof. C. W. Smith among others.

Many a concept and principle relevant to politics and statecraft mentioned in the Qur'an has undergone different interpretations in different periods of Muslim history. Today's political realities and constitutional concepts call for a fresh understanding of concepts such as shura, khilafah, ummah, justice, etc.

Mawlana Abu'l-A'la Mawdudi (1903–1979), *Islamic Law and Constitution*, Lahore, several editions. *Islami Riyasat*, Lahore, several editions.

Taqi al-Din al-Nabhani, founder of Hizb al-Tahrir, authored several treatises on issues related to the Islamic state.

Sayyid Qutb (d. 1967), a leading ideologue of al-Ikhwam al-Muslimun or Muslim Brotherhood, dealt with the issues of the state in his many writings, particularly his magnum opus, *Fi Zilal al-*Qur'an, a commentary of the Qur'an.

This popular movement was led in the 1920s by the late Mawlana Muhammad Ali Jawhar (d. 1931) and a group of activist ulema.

This aspect figures supreme in the popular literature produced during the Pakistan Movement (1940–1947). See for example, Chandhari Habib Ahmad, *Tahrik-i-Pakistan Awr Nationalist* Ulema, Lahore; also I.H. Qureshi, *Ulema in Politics*, Karachi.

Quaid-i-Azam Muhammad Ali Jinnah, *Speeches and Statements as Governor General of Pakistan*,

The term *dawlah* came into popular use after the downfall of the Umayyads and the rise of the Abbassids in the first half of the second century. It was then used to connote 'turn,' i.e. Abassid's turn to rule. It was much later that *dawlah* became synonymous with state; in fact, right up to the seventh century of Hijrah, the term had not been used to denote state (cf. Ibn Manzur, *Lisan al-Arab in loco*).

See, for example, the following Qur'anic verses, 2:128, 143; 3:104, 110; 21:92; 23:52.

Qur'an, 22:41

This is evident by the Qur'anic use of the word *if* in *Al-Hajj* 22: 4. For a longer discussion, see the present writer's *Muhadarat-i-Fiqh*, Lahore, 2005, pp. 41-46.

I. H. Qureshi, *The Muslim Community of the Indo-Pakistan Subcontinent*, Karachi, chapter one.

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Al-Anfal 8:72.

Ibid, Vol. I, p. 120; also, Ahmad ibn Hambal *al-Musnad*, Vol. V, p. 183; Darimi, *al-Sunan*, Introduction, 34; *al-Musnad*, Vol. II, 327, 360, 367; Vol. IV, pp. 80, 82, etc.

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واجب فهو به إلا الواجب يتم لا ما Mustafa Ahmad al-Zarqa’, *al-Madkhal al-Fiqhi al-‘Amm*, Damascus, 1968, Vol. II pp. 784-5, 1088.

References to these terms are found mostly in the criticism directed by some Companions at the nomination by the Caliph Mu’awiyah, of Yazid, his son, as his successor.

بالمصلحة منوط الرعية على الإمام تصرف al-Zarqa, *op. cit*., pp. 1050-1051, also *Majallah* with the commentaries of Ali Haider and Atasi, section 58.

See for examples, inter alia, Ibn Nujaim, *al-Ashbah wa’l-Naza’ir*, Beirut, 1980, pp. 123-126.

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An-Nisa 4: 59.

See, for example, Muslim, *al-Salih*, Karachi, 1349, Vol. II, p. 129.

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Baqillani, Abu Bakr, *al-Tamhid*, p. 184

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Baghdadi, *Usul al-Din*, p. 279.

Ibn Qudamah, *al-Mughani*, p. vol. viii, p. 106

Ale Imran 3: 159.

See for further details, the present writer, *State and Legislation in Islam*, Islamabad 2006, pp. 110-119.

Full text of the memorandum has been quoted by several authorities. See the full text in present writer's, *Adab al-Qadi*, Islamabad, Chapter Four.

For example, the Constitution of the Islamic Republic of Pakistan, Article 184(2); also Constitution of India, Article 131.

The dictum provides the basis for review of a judgment issued by a court.

An-Nisa 4: 135.

Al-Ma'idah 5: 8.

An-Nahl 16: 90.

An-Nahl 16: 91.

Al-Isra' 17: 33.

Al-Isra' 17: 34.

Al-Isra' 17: 35.

Al-Fatir 35: 18.

Ash-Shura 42: 40.

Ash-Shura 42: 41.

Ash-Shura 42: 42.

Al-Hadid 57: 25.

Al-Ma'idah 5: 47.

See chapters on the marriages of the Abl al-Dhimmah in any legal compendium, for example, *Kitab al-Umm*, *Mabsut*, *Hidayah*, or *al-Mughni*.

‡ *Khulafa-i-Rashidin*, meaning "right guided caliphs," is a collective title for the first four caliphs of Islam, Abu Bakr, Umar, Uthman and Ali (may Allah be pleased with them).

Marghinani, *Hidayah*.

Muhammad Hamidullah, *Majmu'at al-Watha'iq al-Siyasiyyah*, Cairo, 1941, pp. 159-161, pp. 37-38.

This commitment was reiterated by the leaders of the Pakistan Movement too frequently to be quoted. See, for example, the statement of Quaid-i-Azam, in Jamiluddin Ahmad, Ed., *Speeches and Statements of Mr. Jinnah*, Vol. I, Lahore, 1960, p. 363.

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See, for example, letters dated 9 June 1936, 28 May 1937 in Muhammad Ali Jinnah, Editor, *Iqbal's Letters to Jinnah*.

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